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Chapter Title: Human Intellect (ʿAql) and Innate Human Nature (Fiṭrah) as Identifiers of Maqāṣid

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of schools and scholars of Shariʿah – even of other traditions and ideologies.[26]

The idea of *maqāṣid* has in reality been the prime mover in bringing the letter and spirit of the law closer together. With regard to the consolidation of hadith, for instance, unlike the Qur'an which is equipped with detailed information on the occasions of its revelation (*asbāb al-nuzūl*), most of the hadith do not elaborate their own occasion and context. This is often left to the speculation of the narrator and jurist. By paying attention to the *maqāṣid* and the overall knowledge of the subject, Hadith scholars were able to sift through and isolate much of the superfluous material in hadith.[27] *Maqāṣid* can also play the same role as criteria of evaluation of legal rulings obtained through interpretation and ijtihad. The *ijtihādī* rules of Shariʿah and fatwa are changeable with the change of time. Almost all jurists understand, as Ibn Qayyim al-Jawziyyah explains, that justice is not done by the formal application of law regardless of circumstances that may present pressing situations of necessity and need. A competent scholar therefore assesses a situation and decides whether or not there is a need for an exception to the law. With knowledge of the purposes and objectives of the law, the scholar would know whether there is a need for fresh ijtihad, or for grant of relaxation (*rukhṣah*) to formal application of the law.

Human Intellect (*ʿAql*) and Innate Human Nature (*Fiṭrah*) as Identifiers of *Maqāṣid*

Can human intellect and judgment validate the *maqāṣid* side-by-side with the text – or even in the absence of a clear text? Different responses have been given by both the early and contemporary jurists. Few would agree that *ʿaql* alone can validate the *maqāṣid* without any textual evidence. Most jurists have agreed, on the other hand, that reason can evaluate human conduct on temporal affairs, but that reason cannot provide a reliable basis of evaluation on devotional matters (*ʿibādāt*).[28] The discourse on this point tends to run parallel, for the most part, with the one that has arisen concerning the proof of *maṣlaḥah*. Al-Ghazali has observed: "It is by means of *ʿaql* that people

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know the benefits of this world."[29] Credibility is given, however, he added, to the intellect of those with sound judgment and knowledge of the custom and culture of society. ʿIzz al-Dīn ʿAbd al-Salām (d. 660/1262) observed that "temporal benefits and harms are mostly known and identified by *ʿaql*, not only in the Shariʿah of Islam, but in most other traditions. A person of sound judgment would know, even before the existence of a revealed text, that realisation of pure benefit or prevention of pure harm is praiseworthy. Learned scholars in most traditions would also agree on the prohibition of murder, theft, adultery and the like. As for the benefit or harm of concern to the hereafter, these can only be known by means of transmitted proof (*naql*)."[30] Ibn Taymiyyah's view on the authority of *ʿaql* is similar but it adds a reference to innate human nature (*al-fiṭrah*)[31] that also plays a role in the identification of *maqāṣid*. The Shāfiʿī school holds unrestricted reasoning (*istidlāl*) as a valid basis of judgment even if it cannot be traced to a proof text, provided that it operates close to the meaning and spirit of those proofs.[32] Imam al-Shāfiʿī referred to the precedent of Companions saying that whenever they could not find a textual ruling on a matter they would resort to *istidlāl*.[33]

Human intellect is informed by the senses, but has the capacity to go beyond the data of the senses, although it falls short of the wider reaches of revelation (*waḥy*). The intellect performs a number of functions. It perceives that which is unseen based on that which is seen, derives universals from particulars, recognises self-evident truth, and associates causes and effects. It is a criterion of responsibility, and the criterion by which God Most High has honoured humankind above the rest of His creation. It is also the only means by which humans can know the essence of responsibility and *taklīf*. Human reason is therefore a credible basis of judgment in the absence of revelation, provided that the judgment arrived at is in harmony with the general spirit and guidance of the revealed scripture.

Innate Human Nature (*fiṭrah*)[34] is a Qur'anic term denoting a human disposition that inheres in every person and thus is universal by the fact of its commonality. The Qur'anic assignment of the vicegerency of man in the earth (*istikhlāf–al-Baqarah*, 2:30) makes everyone carrier of a Divine trust and mission to build the earth. *Fiṭrah* thus refers to the

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innate nature of God's trusted vicegerents, all of whom partake in a sparkle of the Divine (*Ṣād,* 38:72), and excel in ranks over the rest of His creatures (*al-Isrā'*, 17:70). This is also manifested in Islam's designation of itself as *dīn al-fiṭrah*, a religion that strikes harmony with enlightened human nature. *Fiṭrah* is intuitive but matures with insight and experience. Ibn Sīnā (d. 1037) equated *fiṭrah* with *ʿaql* when he spoke of intuitive intellect (*fiṭrah*) endowed in someone who is brought into this world without prior exposure to society. Then he perceives and comprehends concrete realities and customs. He admits, however, that not everything affirmed by *fiṭrah* is true; what is true is the capacity of innate human reason to discern value, good and bad, in what is perceived by the senses.[35]

Natural *fiṭrah* is thus an inherent endowment, and Islam bears essential harmony with it. The natural *fiṭrah* in our human make-up is not all of it known to us, but our intellect can learn much from our inner organism and bodily architecture, genetic, cellular and intercellular communication, and physiological interactions in and between organs. *Fiṭrah* is not sufficiently studied for us to know how it communicates with our intellect. We do not know well enough the physiological workings of our mental faculties within our *fiṭrah*. One can assume, however, that when they go against one another, knowingly or otherwise, a corrective is likely fall due.[36] It goes against the *fiṭrah* of a young child of two, for instance, to be pushed into premature tutoring, for children ought to learn by playing; it also goes against our *fiṭrah* to be deprived of our natural needs for sleep, family ties and friendship.

Whereas rationality is testable through closer scrutiny, *fiṭrah* is not so clearly testable due to our insufficient knowledge of it. Social custom and consensus of people of sound nature may be said, however, to be a reasonably reliable external indicator of *fiṭrah*.

Ibn Ashur linked the *maqāṣid* to *fiṭrah*, quoting a Qur'anic text, and concluded that both the Sharīʿah and its *maqāṣid* bear harmony with *fiṭrah*:[37]

> And so, set thy face steadfast towards the one true faith, turning away from all that is false, in accordance with the natural disposition (*fiṭrah*) which God has endowed in humankind. Allow no change to alter (or corrupt) what God has endowed. (*al-Rūm*, 30:30)

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Fiṭrah also refers, according to Ibn Ashur, to the natural disposition (*khilqah*) and the natural order (*niẓām*) that God has endowed in every creature. The human *fiṭrah* consists both of inward and outward manifestations. Walking on two feet is just as much an aspect of man's physical *fiṭrah* as is his intellect and reason. Similarly, relating effects to their causes and drawing conclusions from them is an intellectual *fiṭrah*. In sum, the Shariʿah objectives, or *maqāṣid,* according to Ibn Ashur, are mostly embedded in man's innate *fiṭrah*.[38]

Actualization of *Maqāṣid* and the Role of *Wasā'il*

The whole of Shariʿah consists of purposes (*maqāṣid*) and the means (*wasā'il*, also known as *mukammilāt*) that seek to attain them. A *wasīlah*/*mukammil* is the means that helps to achieve the particular *maqṣad* it is attached to, be it essential (*ḍarūrī*), complementary (*ḥājī*) or a desirable (*taḥsīnī*). When a suitable means is used to secure a correctly identified purpose, the latter is actualized as a result. Means and accomplishers are sometimes, but not always, identified by the Shariʿah directly or through the fulfillment of certain causes and conditions. The means are liable to change with the change of circumstances, whereas purposes tend to command greater stability and permanence.[39] Yet it is the means that help to establish the relevance of the *maqāṣid* to a particular context or circumstance. The *maqāṣid* are also desired in themselves, whereas the *wasā'il* are not. Moreover, the means are subsumed by their purposes, depending on the strength or weakness of the relationship between them. If the means in question is indispensable to securing its relevant purpose, then according to a legal maxim, "That without which a *wājib* (obligatory command) cannot be accomplished also becomes a *wājib*." This maxim refers to means that is instrumental to its end but not to one that may be related only to a subsidiary or incidental aspect thereof.[40] The reverse of this is also true in that the means to *ḥarām* also partakes in *ḥarām*. Unlawful means cannot therefore bring about lawful results – both the purpose and its means must be lawful.[41]

The means to a certain purpose may have been identified in the text of the Qur'an or Hadith, failing which it is identified through rationality

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